J & D Masonry Inc. and Pyramid Masonry Construction Co., LLC, Alter Egos *and* International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL–CIO. Cases 7–CA–47407 and 7–CA–47547

November 19, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges filed by the Union in Case 7–CA–47407 on April 21, 2004, and in Case 7–CA–47547 on June 2, 2004, the General Counsel issued the consolidated complaint on July 28, 2004, against J & D Masonry Inc. and Pyramid Masonry Construction Co., LLC, alter egos, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On August 30, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On September 2, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively stated that unless an answer was filed by August 11, 2004, all the allegations in the complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 12, 2004, notified the Respondent that unless an answer was received by August 18, 2004, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent J & D Masonry Inc., a corporation with an office and place of business at 4025 Holt Road, Holt, Michigan, has been engaged in the construction industry as an installer of commercial masonry. At all material times, Respondent Pyramid Masonry Construction Co., LLC, a corporation with an office and place of business at 4025 Holt Road, Holt, Michigan, has been engaged in the construction industry as an installer of commercial masonry.

During the 12-month period preceding issuance of the consolidated complaint, a representative period, Respondent J & D Masonry and Respondent Pyramid Masonry, in conducting their business operations, derived gross revenues in excess of $500,000, and purchased and received at their Michigan jobsites goods valued in excess of $50,000 from other enterprises, including Darling Builders Supply, located within the State of Michigan, each of which other enterprises had received these goods directly from points outside the State of Michigan.

We find that Respondent J & D Masonary and Respondent Pyramid Masonry are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names, and have been supervisors of Respondent J & D Masonry and Respondent Pyramid Masonry within the meaning of Section 2(11) of the Act and agents of Respondent J & D Masonry and Respondent Pyramid Masonry within the meaning of Section 2(13) of the Act.

Janet Woodcock	President
Dale Woodcock	Vice President

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees performing construction work within the jurisdiction of the International Union of Bricklayers and Allied Craftworkers, as defined in the Constitution of the International Union, as well as all other work normally and traditionally assigned to and performed by employees represented by the International Union.

Since about February 2, 2001, and at all material times, the Union has been recognized by Respondent J & D Masonry as the exclusive collective-bargaining representative of the unit. This recognition has been embodied by an agreement to be bound by all of the terms and conditions set forth in the 2000–2003 collective-

bargaining agreement between the Union and the Michigan Council of Employers (MCE), and the successor collective-bargaining agreement effective from August 1, 2003, to April 30, 2005.

At all times since about February 2, 2001, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About February 2004, Respondent Pyramid Masonry Construction Co., LLC, was established by Dale and Janet Woodcock.

On a date after February 2004, Respondent Pyramid Masonry Construction Co., LLC, began to operate as a disguised continuance of Respondent J & D Masonry, Inc., operating the business of J & D Masonry in basically unchanged form.

Based on the conduct described above, Respondent J & D Masonry and Respondent Pyramid Masonry Construction, Co., LLC, are alter egos.

On February 27, 2004, by letter, the Union, by its business agent, James Bitzer, requested that Respondent J & D Masonry Inc., by its agents Dale and Janet Woodcock, furnish the Union with certain information concerning J & D Masonry and Pyramid Masonry, including articles of incorporation, if any; assumed name certificate, if any; payroll records; and W-2 tax information. In addition, the Union attached a seven-page document containing 77 questions about Respondent J & D Masonary's and Respondent Pyramid's business and financial operations, administration, management, personnel, employees, customers, shared resources, labor relations, and corporate structure.[1] On March 8, 2004, by letter, the Union again requested that Respondent J & D Masonry furnish the Union with the requested information. The information requested by the Union is relevant to and necessary for the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about February 27, 2004, the Respondent has failed and refused to furnish the Union with the requested information. Since about February 27, 2004, the Respondent has refused to recognize or bargain with the Union as the exclusive collective-bargaining representative of the unit.

Since about February 2004, the Respondent has failed to continue in effect the terms and conditions of employment of the unit contained in the 2003–2005 collective-bargaining agreement.

These subjects relate to wages, hours, and other terms and conditions of employment of the unit, and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.[2]

[1] The February 27, 2004 letter requesting this information stated: "As you know, I am a business representative for BAC Local 9. Dale told me at a meeting on February 2 at Leo's Lounge that you would 'liquidate everything' and that the Cada job was your last job under the name J & D and that in the future you were going to operate non-union. You said that you would operate under the name of 'Pyramid Masonry.' Since that date I have learned that you have bid under this new name and have been awarded a contract for a job at MSU. . . . As a result of your statements and recent events, Local 9 requests that you comply with the existing CBA and provide the following documents in connection with J & D Masonry and Pyramid Masonry."

[2] The complaint also alleges that the Respondent violated Sec. 8(a)(5) and (1) of the Act by failing to make "fringe benefit contributions" as required by the collective-bargaining agreement. However, neither the complaint nor the motion describe what those fringe benefit funds are. The Board has held that certain types of benefit funds are permissive subjects of bargaining for which no remedy would be warranted. See, e.g., *Finger Lakes Plumbing & Heating Co.*, 254 NLRB 1399 (1981) (industry advancement fund). There is no indication here as to the nature of the funds involved. In these circumstances, we decline to find that the Respondent violated the Act by refusing to make contributions to these unspecified funds. Accordingly, the motion is denied with respect to this allegation, and the matter is remanded to the Regional Director for further appropriate action. See *Nick & Bob Partners*, 340 NLRB 1196 fn. 2 (2003) (default judgment denied as to allegation that respondent failed to bargain over decision to close business); *St. Regis Hotel*, 339 NLRB 143, 144 fn. 3 (2003) (default judgment denied as to information request for "other matters important to the Union"); see also *Michigan Inn*, 340 NLRB 983, 989 (2003) (complaint not well pleaded if too vague to determine whether a violation occurred). Nothing herein will require a hearing if, in the event of an appropriate amendment to the complaint, the Respondent again fails to answer, thereby admitting evidence that would permit the Board to find the alleged violation. In such circumstances, the General Counsel may renew the motion for default judgment with respect to the amended complaint allegations. See, e.g., *Cray Construction Group LLC*, 341 NLRB 944 (2004).

Contrary to *Cray Construction*, supra, Member Liebman would find that by failing to file an answer to the complaint, the Respondent has admitted all of its allegations, including that the "fringe benefit contributions" contained in the parties' collective-bargaining agreement are mandatory subjects of bargaining. Accordingly, she would grant the General Counsel's motion in all respects, and would order the Respondent to make all the fringe benefit contributions contained in the agreement unless the Respondent shows in the compliance proceeding that any of the contributions are to benefit funds considered to be permissive subjects of bargaining for which no remedy would be warranted.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) since February 2004 by failing to continue in effect the terms and conditions of employment set forth in the collective-bargaining agreement and by refusing to recognize or bargain with the Union since February 27, 2004, we shall order the Respondent to, on request, meet and bargain with the Union and to abide by the agreement. We also shall order the Respondent to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to adhere to the collective-bargaining agreement, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing to provide relevant and necessary information requested by the Union on February 27 and March 8, 2004, we shall order the Respondent to provide the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, J & D Masonry, Inc. and Pyramid Masonry Construction Co., LLC, alter egos, Holt, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All employees performing construction work within the jurisdiction of the International Union of Bricklayers and Allied Craftworkers, as defined in the Constitution of the International Union, as well as all other work normally and traditionally assigned to and performed by employees represented by the International Union.

(b) Failing and refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit.

(c) Failing and refusing to continue in effect the terms and conditions of employment of the unit employees contained in the 2003–2005 collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain in good faith with the Union as the exclusive representative of the unit employees.

(b) Furnish the Union with the information it requested on February 27 and March 8, 2004.

(c) Continue in effect the terms and conditions of employment of the unit employees contained in the 2003–2005 collective-bargaining agreement.

(d) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of its failure, since about February 2004, to continue in effect the provisions of the collective-bargaining agreement, with interest, as set forth in the remedy section of this Decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Holt, Michigan, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Acting Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 2004.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain with International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL–CIO as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All employees performing construction work within the jurisdiction of the International Union of Bricklayers and Allied Craftworkers, as defined in the Constitution of the International Union, as well as all other work normally and traditionally assigned to and performed by employees represented by the International Union.

WE WILL NOT fail and refuse to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of the unit.

WE WILL NOT fail and refuse to continue in effect the terms and conditions of employment of the unit employees contained in the 2003–2005 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain in good faith with the Union as the exclusive representative of the unit employees.

WE WILL furnish the Union with the information it requested on February 27 and March 8, 2004.

WE WILL continue in effect the terms and conditions of employment of the unit employees contained in the 2003–2005 collective-bargaining agreement.

WE WILL make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of our failure, since about February 2004, to continue in effect the provisions of the collective-bargaining agreement, with interest.

J & D MASONRY INC. AND PYRAMID MASONRY CONSTRUCTION CO., LLC, ALTER EGOS